



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Management Services Group, Inc.

File: B-237363

Date: February 20, 1990

Dana D. Denison, for the protester.
Lester Edelman, Esq., Chief Counsel, United States Army
Corps of Engineers, for the agency.
Charles W. Morrow, Esq. and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Contracting agency reasonably determined bidder to be nonresponsible where bidder's individual sureties were found to be unacceptable based on information contained in their affidavits and an ongoing federal investigation which cast doubt on their credibility and integrity.

DECISION

Management Services Group, Inc. (MSGI), protests the rejection of its bid and award of a contract to B & R Insulation, Inc., under invitation for bids (IFB) No. DACA41-89-B-1287, issued by the Kansas City District, United States Army Corps of Engineers, for asbestos abatement at Fort Leavenworth, Kansas. The Corps determined MSGI to be nonresponsible because it proposed unacceptable individual sureties.

We deny the protest.

The IFB required bidders to provide a bid bond in an amount equal to 20 percent of their bid prices. At bid opening, on August 24, 1989, the Corps received three bids. MSGI, the apparent low bidder, submitted bid bonds guaranteed by two individual sureties, Richard G. Ungar and Leland S. Spencer. The Corps requested additional financial information on the sureties, to which MSGI responded with additional information from the surety brokerage company of these individuals, the Sureties, on September 1. After investigating the individual sureties, the Corps determined them to be unacceptable due to a number of factors that cast

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doubt on their credibility, integrity, and net worth. Thus, MSGI was rejected as nonresponsive on September 29. Because the second low bid was determined to be nonresponsive, award was made on September 30, to B & R Insulation, the next low responsive bidder, whose proposed individual sureties were determined to be acceptable. MSGI's protest followed.

The SF 28, Affidavit of Individual Surety, requires the individual surety to list solely-owned assets, liabilities, and net worth, and to furnish a Certificate of Sufficiency. This certificate is required to be signed by an officer of a bank, trust company, or public official. The officer or official certifies that, based upon a personal investigation, the surety is responsible and qualified to act as such, and, to the best of the knowledge of the certifier, that the facts stated by the surety in the SF 28 are true. In MSGI's case, the Corps discovered that the bank officer on Richard Ungar's SF 28 had not been employed with the bank since December 1988. The bank officer on Leland Spencer's SF 28, when contacted, indicated that he had no personal knowledge of the financial status of Mr. Spencer, and that he executed a blank SF 28 for Mr. Spencer.

The investigation also revealed that the brokerage company, the Sureties, was owned and controlled by and shared the same business address as a company which was the subject of a criminal investigation by a federal joint task force for brokering fraudulent surety bonds and individual sureties, which resulted in several arrests. The investigated company regularly brokered Mr. Ungar and Mr. Spencer.

Moreover, the Corps found that the financial information furnished by Mr. Ungar was accompanied by a disclaimer from a certified public accountant indicating that no audit of the assets had been conducted and that all information provided was based upon the representations of Mr. Ungar. A second SF 28 executed by Mr. Ungar was submitted by the broker with the requested additional documentation which showed significantly different values of the listed assets and a significantly different total net worth. The Corps also discovered that Mr. Ungar had indicated yet a different total net worth from either of these two figures on a Naval Facilities Engineering Command procurement in April 1989, in which both Mr. Ungar and Mr. Spencer had been rejected after an investigation of their assets. Also, many of Mr. Ungar's assets were jointly owned with his wife--a fact that was not disclosed on the SF 28. Due to the aforementioned discrepancies and others, the Corps determined MSGI's individual sureties to be unacceptable because their

credibility, veracity, integrity and net worth were in question.

MSGI denies the accuracy of many of the referenced discrepancies. MSGI also contends that the Corps' action was improper because the Corps never contacted MSGI or the sureties themselves and that Messrs. Ungar and Spencer had sufficient money in their bank accounts to cover the amount required for the bond which could have been substantiated by a phone call.

Bid bond requirements are to assure the government that the bidder will execute the contract and provide required payment and performance bonds by placing the liability for excess reprourement costs on the surety if the bidder fails to honor its commitments. To assure adequate bond security, the contracting officer may investigate and determine the acceptability of individual sureties by examining the information contained in the SF 28 and any other information pertaining to the sureties' net worth. See Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD ¶ 218. Surety acceptability is a matter of bidder responsibility to be determined by the contracting officer, who possesses a significant amount of discretion and business judgment in making the determination, which we will not question unless the protester shows that the decision was without a reasonable basis. Id.

Here, MSGI has not shown that the Corps acted unreasonably in rejecting the individual sureties as unacceptable; to the contrary, the record indicates the Corps' rejection of MSGI's sureties was reasonable. For example, the fact that one Certificate of Sufficiency was signed by a former bank officer and the other was signed by a bank officer with no knowledge of the surety's assets was a sufficient basis for the Corps to discount the certificates as evidence verifying the assets of these sureties.^{1/} See Construct Sun, Inc., B-234068, May 8, 1989, 89-1 CPD ¶ 431.

Moreover, we have found that an individual surety's association with a surety broker firm, which has engaged in questionable business practices and which is under criminal investigation by the federal government, as in this case, may be sufficient grounds for the agency to reject the

^{1/} As previously noted, the Certificate requires a current bank officer, etc., to certify that the surety is personally known, responsible, and that the facts stated by the surety in the affidavit are, to the best of his knowledge, true.

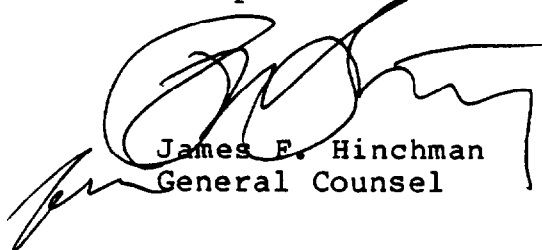
surety, even when the surety is not shown to have participated in irregular bond practices, since this information casts legitimate doubts on the integrity of the surety and raises a serious question concerning its credibility. See Surface Preparation and Coating Enters., Inc., B-235170, July 20, 1989, 89-2 CPD ¶ 69. Here, as indicated above, both individual sureties have been brokered by a firm under criminal investigation.

Moreover, the Corps found that the assets identified by Mr. Ungar included a significant amount of jointly held property that was not identified as such on the SF 28. Not only does this cast doubts on the surety's integrity and credibility, see Hughes & Hughes, B-235723, supra, but there is some question whether these assets should be counted in determining the surety's net worth. See National Hazard Control Corp., B-237194, Feb. 9, 1990, 90-1 CPD ¶ ____.

MSGI responds that most of the questions raised as to the acceptability of the individual sureties are not true; however, MSGI has offered no evidence to support its assertions. Thus, it was not unreasonable for the Corps to question the credibility and integrity of the sureties and to reject them, without any further discussion, particularly since MSGI was provided an opportunity to submit additional information on its sureties after bid opening. See Seaworks, Inc., B-226631.2, Dec. 22, 1989, 89-2 CPD ¶ 581.

To the extent that MSGI argues that the sureties had sufficient other assets to satisfy the bonding requirement, it is our view that once the accuracy of the sureties' representations reasonably have been called into question, then notwithstanding the alleged adequacy of other assets, the agency is justified in rejecting the sureties. Hughes & Hughes, B-235723, supra.

The protest is denied.



James F. Hinchman
General Counsel